

IT 95-50
Tax Type: INCOME TAX
Issue: Non-Filer (Income Tax)

STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
CHICAGO, ILLINOIS

XXXXXX) CLAIM FOR REFUND
Taxpayer) Docket No.
v.) SSN
THE DEPARTMENT OF REVENUE) John E. White,
OF THE STATE OF ILLINOIS) Administrative Law Judge

RECOMMENDATION FOR DISPOSITION

SYNOPSIS: This matter involves XXXXX ("Taxpayers")1 amended Illinois income tax return, IL-1040X, which was filed to claim a refund of income taxes paid for the taxable year ending 1987. At issue is whether Taxpayer's amended return was properly partially denied by the Department, pursuant to the Illinois Income Tax Act ("IITA"), 35 ILCS 5/1 et seq.

FINDINGS OF FACT:

1. This matter arose after Taxpayer protested the Department's Notification of Partial Refund (Partial Denial) to Taxpayer ("NPR") regarding Taxpayer's Amended Individual Income Tax Return, Form IL-1040X, dated August 15, 1990, filed by Taxpayer for calendar year 1987.

2. The basis for Taxpayer's amendment of the original IL-1040X was an IRS ruling in which the partnership in which XXXXX is a partner was allowed to change its fiscal year for filing purposes. See Protest.

3. Taxpayer's amended return was partially denied because Taxpayer did not also amend his previously filed Schedule CR (Credit for Taxes Paid to Other States), on which Taxpayer had reduced his taxable gross income by identifying the amount of partnership income which had been subject to tax by states other than Illinois during the earlier fiscal year. See NPR, and attached Department amended Schedule CR.

4. Taxpayer included in his protest a revised IL-1040X, and a revised Schedule CR. See IL-1040X, dated 4/23/91.

5. Taxpayer did not request a hearing. Id.

CONCLUSIONS OF LAW: Pursuant to 904(a) of the IITA, a Notice of Partial Refund is prima facie evidence of the correctness of the amount of refund due. 35 ILCS 5/904(a) (1992). Here, the NPR issued by the Department established the correctness of the Department's decision to reduce the amount of refund claimed by Taxpayer.

The manner in which the Department corrected Taxpayer's original Schedule CR, however, was such that it completely eliminated the credit to which Taxpayer was entitled based on the portion of the partnership income taxed by other states during the amended period. Taxpayer argued that, instead of completely removing the total amount of Taxpayer's partnership income during the amended period from the income taxed by other states (as the Department did when correcting Taxpayers' filed Schedule CR), it would be more consistent with the purpose of Schedule CR to reduce line B of that schedule by an amount equal to the proportionate share of income not taxed by other states to the total partnership income. Taxpayer included in his protest a revised Schedule CR, on which Taxpayer did just that. Taxpayer also included a revised amended IL-1040X, on which Taxpayer included the recalculated credit on his revised Schedule CR. See IL-1040X, dated 4/23/91, line 9c, line 15.

I conclude that the Department's decision to reduce the amount of Taxpayers' claimed refund was proper; its quantification of the amount to be refunded, however, was not. Taxpayer's amended Schedule CR and revised amended IL-1040X, included within his Protest, more properly quantify the amount of refund to which Taxpayer is entitled.

CONCLUSION: I recommend that the Director revise the previously issued Notification of Partial Refund, and that Taxpayer be refunded \$84.00. That

figure is obtained by subtracting the amount already refunded to Taxpayer from the amount of refund claimed on line 15 of Taxpayer's revised IL-1040X, dated 4/23/91, to wit: \$85.00 - \$1.00 = \$84.00. I further recommend that the Notification be finalized as revised, and that this matter be closed.

Administrative Law Judge

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1. Although this matter is captioned under the names of the joint filers of the Illinois 1040 income tax return, I shall refer to the Taxpayers throughout this decision using the third person singular.